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HON. WHITMAN L. HOLT  
Hearing : March 8, 2021  
10 :00 a.m. PST  
Response: March 1, 2021  
4:00 p.m. PST  
Reply: March 4, 2021

11 UNITED STATES BANKRUPTCY COURT

12 EASTERN DISTRICT OF WASHINGTON

13 In re:

14 EASTERDAY RANCHES, INC.,

15 Debtor.

Chapter 11

Case No.: 21-00141 WLH11

**MOTION FOR APPOINTMENT OF  
CHAPTER 11 TRUSTEE**

16 Tyson Fresh Meats, Inc. (“**Tyson**”) respectfully moves the Court for an order under  
17 § 1104(a)(1) appointing a Chapter 11 trustee to assume control of the estate of Debtor Easterday  
18 Ranches, Inc. (“**Debtor**” or “**Easterday Ranches**”). There is no dispute over the underlying facts in  
19 this case: Debtor is responsible for a massive fraud upon Tyson and other creditors. Debtor now  
20 argues that it has clean hands because it has retained Paladin Management to operate Easterday  
21 Ranches and has retained an independent board. But even after the fraud was uncovered and  
22 Debtor was operating under the auspices of Paladin, Debtor engineered a surreptitious sale of its  
23 largest unencumbered parcel in a fire sale transaction on the eve of bankruptcy, and then distributed  
24 over eighty-five percent of the proceeds (almost \$13 million) to affiliates, insiders, and  
25 professionals rather than to third party creditors. Debtor’s management, however constituted,  
26 cannot be trusted to keep the interests of creditors of this estate, rather than other entities owned by  
27  
28

MOTION FOR APPOINTMENT OF  
CHAPTER 11 TRUSTEE – 1

1 the Easterday family, at heart. Further, Debtor's belated wholesale management change –  
2 composed of a passel of newly installed professionals selected behind the scenes in an extra-judicial  
3 process - demonstrates rather than refutes the case for a trustee. Everyone agrees the company  
4 needs management untainted by the Easterday family, providing new, independent guidance. That  
5 guidance should come from a trustee appointed in accordance with the Bankruptcy Code, not the  
6 proposed more expensive alternative including Paladin, which was selected by the Easterday family  
7 and which participated in (or at the least, failed to prevent) the final fraudulent and preferential  
8 transactions. For all these reasons, a trustee is necessary for the protection of the estate and is in the  
9 best interests of creditors and others.

11 The Motion is based on the concurrently filed Declaration of Leah Andersen ("**Andersen**  
12 **Decl.**"), Declaration of Shane Miller ("**Miller Decl.**"), Declaration of John S. Wilson, Jr. ("**Wilson**  
13 **Decl.**"), and Request for Judicial Notice ("**RJN**"), the following points and authorities, and such  
14 other and further evidence and argument as may be provided to the Court at or prior to the hearing  
15 on this Motion.

17 Appended hereto is a [Proposed] Order Directing Appointment of Chapter 11 Trustee.<sup>1</sup>

### 18 **BACKGROUND**

19 The events that led to this bankruptcy are not in dispute. Easterday Ranches is a feedlot and  
20 grow lot operator with significant operations in the Tri-Cities area, both Franklin and Benton  
21 Counties. Easterday Ranches purchases calves on behalf of Tyson, then feeds and takes care of the  
22 cattle as they grow to marketable size, whereupon the cattle are delivered to Tyson's processing  
23 plant in Pasco.

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27 <sup>1</sup> This Motion requests appointment of a trustee only for Easterday Ranches. Tyson takes no position at this point on  
28 whether a trustee would be appropriate for its sister company Easterday Farms, a general partnership, if and when  
Easterday Farms files its own bankruptcy petition.

1 Cody Easterday, the President of Debtor Easterday Ranches, initiated and carried out a  
2 fraudulent scheme whereby Easterday Ranches reported to Tyson purchases of calves that did not  
3 exist, requested and received reimbursement from Tyson for those purchases, then reported  
4 purchases of feed and other supplies for those fictitious cattle, and requested and received  
5 reimbursement from Tyson for the nonexistent feed purchases as well. By the time the fraud was  
6 uncovered in December 2020, Tyson had been defrauded out of more than \$225 million, and there  
7 were more than 200,000 cattle “missing” from Easterday Ranches. Tyson does not believe any of  
8 those facts are now controverted by Debtor or anyone else. In any event, those facts were all  
9 demonstrated in Tyson’s Complaint and Motion for Appointment of Receiver and Injunctive and  
10 Other Relief (the “*Tyson Complaint*” and the “*Receiver Motion*”) filed January 24 in Franklin  
11 County Superior Court.<sup>2</sup> The Receiver Motion was scheduled for hearing the afternoon of  
12 February 1, but Debtor filed its chapter 11 petition that morning.<sup>3</sup>

15 The Receiver Motion requested appointment of a receiver over Easterday Ranches based on  
16 the fraud perpetrated by Easterday Ranches and Cody Easterday, and also requested that the  
17 Franklin County Superior Court issue a temporary restraining order (TRO) against Easterday  
18 Ranches, preventing it from selling the “North Lot” - its most valuable unencumbered real property.  
19 When Tyson filed the Receiver Motion, Tyson feared that Debtor would sell the North Lot at a fire-  
20 sale price and distribute the proceeds to insiders and others, thus causing three harms: depriving  
21 Debtor’s estate (whether receivership estate or bankruptcy estate) of a valuable asset for inadequate

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24 <sup>2</sup> Tyson is requesting that the Court take judicial notice of the Tyson Complaint, Receiver Motion, and related documents  
25 through its Request for Judicial Notice filed concurrently herewith. Although Tyson does not believe any of the recited  
26 facts are in dispute, the witnesses who provided declarations in support of the Receiver Motion and whose declarations  
27 are included within the Request for Judicial Notice will be available to the Court and others for examination at the  
28 hearing on this Motion.

<sup>3</sup> After Tyson filed the Receiver Motion, Washington Trust Bank filed a complaint and motion for receiver over  
Easterday Farms as well as Easterday Ranches, and noticed its motion for the same time as Tyson’s Receiver Motion. At  
the time this Motion was prepared Easterday Farms had not yet filed a bankruptcy petition.

1 consideration; preferring some creditors, even legitimate creditors, to the detriment of others; and  
2 sending significant assets out of the estate and to other Easterday family interests, including  
3 Easterday Farms and others. What Tyson did not then know was that just two days before the filing  
4 of the Receiver Motion, Debtor had already surreptitiously closed on the sale of the North Lot.

#### 5 **SALE OF THE NORTH LOT**

6  
7 Tyson first learned of the possible sale of the North Lot in a conference call on Friday,  
8 January 22, among Cody Easterday, Peter Richter of Paladin Management Group, and several  
9 Tyson representatives. The Tyson representatives were told Debtor was selling the North Lot.  
10 Andersen Decl. ¶ 7; Miller Decl. ¶ 7. Tyson was not told either that the sale of the North Lot had  
11 already closed or that it was in the process of closing that day. *Id.* The Tyson representatives asked  
12 the identity of the purchaser of the North lot, and the Easterday representatives refused to disclose  
13 such information. Miller Decl. ¶ 8. In a subsequent call later in the day on January 22 between  
14 Cody Easterday and Shane Miller of Tyson, Cody Easterday stated that he could disclose the  
15 identity of the purchaser of the North Lot only after the close of business on Monday, January 25.  
16 *Id.* This led Tyson to believe that the sale of the North Lot would close on Monday, January 25.

17  
18 Tyson immediately took action to protect its rights, filing the Complaint and Receiver  
19 Motion that Sunday (January 24) in an effort to stop the sale of the North Lot before irreparable  
20 harms could occur. Only after receiving notice of the Complaint and Receiver Motion did Debtor  
21 inform Tyson, on Monday, January 25, that the sale had already closed the previous Friday.

22  
23 In response to Tyson's request, Debtor later provided Tyson with a schedule disclosing how  
24 the proceeds of the North Lot sale were distributed. Andersen Decl., ¶¶ 10-12 and Exhibit A  
25 thereto. Of the \$16 million sale price, approximately \$15.1 million was apparently immediately  
26 distributed, and of that \$15.1 million:

- About \$5.0 million went to Easterday Farms and another company owned by Easterday family members, English Hay Company, on account of outstanding feed costs.
- About \$2.0 million went to Easterday Farms as a prepayment for feed that had not yet been invoiced.
- About \$4.75 million went to Easterday Farms on account of a loan, apparently long outstanding and unsecured.<sup>4</sup>
- About \$1.2 million went to Debtor's professionals.

Thus, of the \$15.1 million in sale proceeds that were disbursed, \$13 million went directly to affiliates or professionals: ***only \$2.1 million (less than 14%) went to third party creditors and almost \$12 million (close to 80%) went directly to Easterday Farms and other Easterday family owned entities.*** In short, Tyson was absolutely justified in fearing that the North Lot sale would be used to benefit insiders to the detriment of everyone else.

Further, it appears Tyson was absolutely justified in fearing the North Lot sale would be accomplished through a fire-sale process yielding an inadequate price. There is no indication in any of Debtor's pleadings that there was an organized marketing process for the North Lot. Instead, it appears Debtor went only to one party - a competitor of Tyson's who could be trusted not to let news of the sale leak - and closed the sale in a rush, all behind the backs of Tyson and the other creditors. We will not know how much value Debtor left on the table unless and until the North Lot is the subject of a true marketing process or the transaction is reviewed by an independent party.

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<sup>4</sup> Easterday Farms is a general partnership composed of four members of the Easterday family, including Cody Easterday, each of whom is therefore liable for all of Easterday Farms' obligations. Those family members thus directly benefited from the payments to Easterday Farms.

1 We do have, however, two indications that the value received by the Debtor was woefully  
2 inadequate:

- 3 • In discussions with Tyson in December over a possible transfer of the North Lot to  
4 Tyson to begin to repay some of what was owed Tyson, Cody Easterday claimed the  
5 North Lot was worth \$20 million. Andersen Decl. ¶ 8; Miller Decl. ¶ 9.<sup>5</sup>  
6
- 7 • A prospective buyer of the North Lot - who was **not** contacted by Debtor in its fire-  
8 sale process - has informed Tyson that it is very interested in pursuing a purchase of  
9 the North Lot at significantly more than \$16 million, subject to customary title due  
10 diligence. Wilson Decl. ¶ 7.

### 11 MANAGEMENT'S PARTICIPATION

12 Debtor has made it clear in its first day pleadings and the first day hearing that its principal  
13 pitch for opposing a trustee is the presence of a whole new management slate, untainted by Cody  
14 Easterday's massive fraud. What Debtor glosses over, however, is that the sale of the North Lot  
15 and dissipation of the sale proceeds both occurred under the watch of Paladin Management, the  
16 company providing the proposed co-chief restructuring officers. Those egregious transactions  
17 cannot be passed off as simply more bad acts by Cody Easterday.  
18

19 Debtor will no doubt argue that it was in desperate need of cash and that a sale was  
20 necessary to keep feed suppliers and other such third party creditors at bay. Debtor's actual use of  
21 proceeds from the sale, however, belies that argument. **Almost eighty percent of the distributed**  
22 **proceeds - some \$12 million - went straight into the pockets of Easterday family affiliates and**  
23 **not other feed creditors. Further, almost half of the amount sent to Easterday Farms had**  
24 **nothing to do with feed costs - it instead went to repay an apparently unsecured loan from**  
25  
26

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27 <sup>5</sup> Those discussions were short lived and were abandoned when the parties mutually concluded the North Lot would have  
28 to be used to benefit all creditors, not just Tyson.

1 **insider Easterday Farms.** Fire-selling assets and distributing proceeds to insiders on the eve of  
2 bankruptcy are not the acts of an independent fiduciary who can be trusted to look out for the  
3 interests of creditors. They are the acts of people who are looking out for the interests of the  
4 Easterday family and the entities they own at the expense of this estate. This conduct cannot be  
5 ignored and it cannot be condoned.

6  
7 At the first day hearing in this case, counsel for Debtor attempted to minimize Paladin's role  
8 in the North Lot sale, arguing they were merely financial advisors, and not yet officially appointed  
9 as co-CROs. That may be true, but Paladin was retained by the Easterday family when Cody  
10 Easterday was in control. Further, Tyson believes, based on the conversations Paladin participated  
11 in and which are described in the Andersen and Miller declarations, that Paladin was actively  
12 involved in sale of the North Lot and distribution of the proceeds. A financial advisor who was  
13 retained by the fraudulent managers and who then willingly participated in such obviously  
14 inappropriate transactions is not the kind of pristine new management required in a situation like  
15 this.

### 16 17 **CLEANING UP THE MESS**

18 Finally, consideration has to be given to cleaning up the problems caused by the North Lot  
19 sale. Given Paladin's participation in the transaction, it cannot possibly be involved in solving the  
20 problems it helped cause.

21  
22 There are at least three major issues, each of which has already cost the Easterday Ranches  
23 estate a massive amount of money and will cost even more to resolve.

- 24 • First, there is the blatantly preferential transfer of \$4.75 million from Easterday  
25 Ranches to Easterday Farms, reportedly on account of an outstanding unsecured  
26 loan. How will that be dealt with? Is Easterday Farms, or the Easterday family  
27 members who are general partners of Easterday Farms, just going to repay that  
28

1 money to the Easterday Ranches estate? Not likely. And who is going to prosecute  
2 those claims? Easterday Ranches' new management, who helped orchestrate the  
3 transfer and is presumably also part of the management of the transferee Easterday  
4 Farms? Not likely. Instead, it will require the intervention of a creditors'  
5 committee composed of Easterday Ranches creditors (not Easterday Farms  
6 creditors) - or some other independent actor untainted by its participation in the  
7 transfer, such as a trustee - to prosecute the claim and try to resolve the manifold  
8 issues caused by the inappropriate transfer.<sup>6</sup> That is not a simple or inexpensive  
9 process, and it cannot be undertaken by current management.  
10

- 11 • Second, there is the \$7 million paid to Easterday Farms and English Hay Company  
12 for feed costs, including a \$2 million prepayment to Easterday Farms. Those  
13 transfers were clearly preferential over other creditors. They may arguably not be  
14 avoidable if the recipients have statutory lien rights, but once again, this is  
15 something that will have to be investigated by an independent actor, not one who  
16 participated in the transfer.<sup>7</sup>  
17
- 18 • Third, there is the fact that a major unencumbered asset is gone from the estate. As  
19 noted above, there are very strong indications that the fire sale conducted by  
20 Easterday Ranches and Paladin without any semblance of a marketing process  
21 yielded a price well under the value of the North Lot. Who will investigate that sale  
22 to determine if it was a constructive fraudulent transfer? Was it an actual fraudulent  
23

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25  
26 <sup>6</sup> With Easterday Farms likely also soon to be in bankruptcy and beneficiary of its own automatic stay, this may not be a  
27 litigation problem. But it will complicate all intercompany dealings and make it even more difficult to find a solution  
28 that is fair to creditors of both estates, given the unjustifiable shift of nearly \$5 million from one estate to the other on the  
eve of bankruptcy.

<sup>7</sup> The same preference issues, and presumably the same statutory lien defenses, though without the stench, exist for the  
handful of true third party creditors paid out of the North Lot sale proceeds.

1 transfer? Was it otherwise avoidable? Who will study the process to see if it was  
2 reasonable and fair? Current management who participated in the sale and also act  
3 as management of the recipient of the sale proceeds? Not likely. Yet again, a truly  
4 independent manager is needed to look into those issues.

### 5 **ONGOING OPERATIONS**

6  
7 Tyson understands the Court and others are interested in Tyson's intended operations at the  
8 Easterday Ranches properties. Tyson has recently determined that the most efficient means of  
9 dealing with its 53,000 cattle currently on Debtor's feedlots is to leave the more mature cattle on the  
10 Easterday Ranches properties and move the younger cattle off the Easterday Ranches properties.  
11 This should allow a cessation of business at the Easterday Ranches feedlots and grow yards by the  
12 end of June. Miller Decl. ¶ 10. Whatever the scope or length of the operations, of course, Tyson is  
13 by an order of magnitude the largest creditor in this case, has intense interest in maximizing the  
14 value of the estate and thus in the identity and conduct of management of the Debtor, and believes a  
15 trustee should be appointed.  
16

### 17 **ARGUMENT**

#### 18 **A. Standards for Appointment of a Trustee**

19 Section 1104(a) provides in relevant part:

20  
21 (a) At any time after the commencement of the case but before confirmation of a plan,  
22 on request of a party in interest or the United States trustee, and after notice and a hearing,  
the court shall order the appointment of a trustee -

23 (1) for cause, including fraud, dishonesty, incompetence, or gross  
24 mismanagement of the affairs of the debtor by the current management, either before  
or after the commencement of the case, or similar cause . . .

25 (2) if such appointment is in the interests of creditors, any equity security  
26 holders, and other interests of the estate . . .

27 The words "including" and "or similar cause" in § 1104(a)(1) reflect that the grounds for  
28 appointing a chapter 11 trustee are not limited to those specifically set forth in the statute. And the

1 use of the word “*shall*” indicates the intent of Congress that misconduct by a debtor, prepetition or  
2 postpetition, may not easily be ignored.

3 “Section 1104(a) represents a potentially important protection that courts should not lightly  
4 disregard or encumber with overly protective attitudes towards debtors-in-possession.” *In re V.*  
5 *Savino Oil & Heating Co.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989). “[T]he appointment of a  
6 trustee is a power which is critical for the Court to exercise in order to preserve the integrity of the  
7 bankruptcy process and to insure that the interests of creditors are served.” *In re Nartron Corp.*,  
8 330 B.R. 573, 591-92 (Bankr., W.D. Mich. 2005).

9  
10 As the *Savino Oil* court explained:

11 debtor-in-possession governance is the norm in Chapter 11. However, the encompassing  
12 language of 1104(a)(1) prefaced by a mandatory “shall” reflect an equally important  
13 countervailing or balancing congressional intent. The willingness of Congress to leave a  
14 debtor-in-possession is premised on an expectation that current management can be  
15 depended on to carry out the fiduciary responsibilities of a trustee.

16 *Savino Oil, supra*, 99 B.R. at 525-26.

17 Finally, the Court should consider this Motion on a preponderance of the evidence standard.  
18 There is case law indicating a trustee motion requires clear and convincing evidence, but that is  
19 inconsistent with the Supreme Court’s directive in *Grogan v. Garner*, 498 U.S. 279, 286 (1991):

20 [W]e begin our inquiry into the appropriate burden of proof under § 523 by examining the  
21 language of the statute and its legislative history. The language of § 523 does not prescribe  
22 the standard of proof for the discharge exception. The legislative history of § 523 and its  
23 predecessor, 11 U.S.C. § 35 (1976 ed.), is also silent. This silence is inconsistent with the  
24 view that Congress intended to require a special, heightened standard of proof.

25 One must only replace § 523 with § 1104 to reach the correct result here. There is nothing  
26 in § 1104 or its legislative history respecting burden of proof. The standard is a preponderance of  
27 the evidence. *Tradex Corp. v. Morse*, 339 B.R. 823, 829-32 (D. Mass. 2006); *In re Altman*, 230  
28 B.R. 6, 16-17 (Bankr. D. Conn. 1999), *aff’d in part, vacated in part on other grounds*, 254 B.R. 509

1 (D. Conn. 2000). In any event, the evidence submitted with this Motion satisfies whatever standard  
2 is applied.

3 **B. Cause Exists for Appointment of a Trustee Under § 1104(a)(1)**

4 Easterday Ranches' surreptitious sale of the North Lot and distribution of the proceeds  
5 primarily to Easterday family interests is an egregious breach of the fiduciary duties of controlling  
6 persons. Easterday Ranches will try to justify the sale based on its need to pay feed suppliers, but  
7 the facts speak for themselves: only about \$2.1 million (~14%) of the proceeds went to third party  
8 creditors. Almost \$12 million (~80%) of the proceeds went directly to entities owned by the  
9 Easterday family. While about \$5 million of that was on account of existing feed-related invoices,  
10 Debtor used sale proceeds to pay Easterday Farms a prepayment of uninvoiced deliveries (another  
11 \$2 million). Insider Easterday Farms was the only feed supplier to get an advance payment from  
12 the sale proceeds. And the most egregious of all: Debtor distributed an additional \$4.75 million to  
13 Easterday Farms on account of a pre-existing unsecured loan.<sup>8</sup> That payment was totally  
14 unnecessary and totally inexplicable other than by a desire to help the Easterday family members  
15 who are general partners of Easterday Farms, all at the expense of everyone else involved in this  
16 case. And it happened on Paladin's watch, presumably with the assistance and cooperation of  
17 Paladin.  
18

19  
20 Debtor will no doubt argue that whatever happened in the past is of no concern because they  
21 now have a whole new management slate, some of which was put in place literally on the eve of  
22 bankruptcy. But the latest chapters in the Debtor's history - the surreptitious sale of the North Lot  
23 in a process free fire sale and the distribution of 80% of the proceeds to the Easterday family - were  
24  
25  
26

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27  
28 <sup>8</sup> That is according to Debtor's explanation. It is not evident there was in fact such a pre-existing obligation; that and all other issues raised in this Motion remain to be investigated.

1 accomplished while Paladin, part of the new management, selected by the Easterday family, was on  
2 board. Paladin should never have allowed that egregious breach of duty to occur.

3 Such machinations by current management constitute precisely the kind of conduct that has  
4 justified appointment of trustees in other cases. *See, e.g., In re Veblen West Dairy LLP*, 434 B.R.  
5 550 (Bankr. D.S.D. 2010) (appointment of trustee appropriate based on suspicious transactions with  
6 affiliates); *In re Keeley and Grabanski Land Partnership*, 455 B.R. 153 (8th Cir. B.A.P. 2011)  
7 (affirming order appointing trustee based in large part on undermarket leases to, and other  
8 transactions with, affiliates).  
9

10 Cause exists under Section 1104(a)(1) for appointment of a trustee.

11 **C. Appointment of a Trustee is in the Interests of Creditors Under § 1104(a)(2)**

12 The same facts and factors require appointment of a trustee as in the interests of creditors.  
13 While different courts sometimes use different methodologies, one of the most commonly used is a  
14 four-factor test recently summarized in *In re Vascular Access Ctrs., L.P.*, 611 B.R. 742, 765 (Bankr.  
15 E.D. Pa. 2020); see also *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 168 (Bankr. S.D.N.Y. 1990):  
16

- 17 (1) the trustworthiness of the debtor;
- 18 (2) the debtor in possession's past and present performance and prospects for the  
19 debtor's rehabilitation;
- 20 (3) the confidence - or lack thereof - of the business community and of creditors in  
21 present management; and
- 22 (4) the benefits derived by the appointment of a trustee, balanced against the cost of the  
23 appointment.  
24

25 Each of these factors supports appointment of a trustee. First, the debtor has shown itself to  
26 be completely untrustworthy, having presided over one of the largest frauds perpetrated in this area  
27 in recent years. While most of that conduct predated the recently retained management team, as  
28

1 discussed at length elsewhere in this Motion the sale of the North Lot and the distribution of  
2 proceeds to the Easterday family was on Paladin's watch, apparently affirmatively assisted by  
3 Paladin. This factor supports appointment of a trustee.

4         Second, there is no prospect for this debtor's rehabilitation. This is a liquidation case, with  
5 only a few months of operations needed before sale of the remainder of the real estate and other  
6 assets. The most that can be hoped for is operations are kept alive long enough to sell as a going  
7 concern, but it will still be a sale to new owners, with proceeds going to pay off the hundreds of  
8 millions of dollars owed to Tyson and tens of millions of dollars owed to other creditors. A trustee  
9 can do that just as well as Debtor's new management team of retained professionals. This factor  
10 strongly supports appointment of a trustee.

11         The third factor, confidence in management, also supports appointment of a trustee. To the  
12 extent prior (Cody Easterday and the Easterday family) management is concerned, there is no  
13 confidence. To the extent the new management team is concerned, Tyson (Debtor's largest  
14 unsecured creditor by an order of magnitude) has lost confidence. While this has yet to be tested in  
15 the creditor body at large, given the one transaction with which the new management team has been  
16 involved - the North Lot sale - the new team will not pass the test. Tyson believes other creditors  
17 will be just as shocked as Tyson was to learn that the Easterday family members were the principal  
18 beneficiaries of this desperation sale which Paladin facilitated. This factor favors appointment of a  
19 trustee.

20         The fourth factor is multifaceted. Appointment of a trustee entails a level of expense that in  
21 some cases is an additional cost to the estate, but in this case will likely be considerably less than  
22 the cost of Debtor's proposed slate of new management professionals. The proposed new  
23 management team - all of whom are necessary in order to provide some credulity to the claim that  
24 the Easterday family is no longer involved in the management of Easterday Ranches - will cost the  
25

1 estate dearly. According to Debtor's budget filed with its cash collateral motion [Dkt. No. 12-1],  
2 the new directors will each be paid \$20,000 per month, or \$60,000 each month for the group. The  
3 professionals are requiring new D&O insurance costing some \$400,000. Professional fees are  
4 budgeted at over \$650,000 per month. Counsel's rates, while within the range of national  
5 practitioners, are considerably in excess of local prevailing rates - and they require local counsel  
6 along with national counsel.  
7

8 A trustee will of course not be cheap, but a trustee who has experience with similar  
9 operations will supplant the co-CROs and avoid that cost, as well as all of the directors' fees, all  
10 within a trustee's maximum three percent compensation - about \$180,000 per month on the  
11 budgeted level of activity, and reducing from there as cattle are moved or sold.<sup>9</sup> The trustee's bond  
12 will cost a tiny fraction of the D&O insurance. Trustee counsel's rate will undoubtedly be lower  
13 than that proposed by Debtor. Overall, a trustee will yield a considerable reduction in expense to  
14 the estate.  
15

16 As to intangible benefits and detriments, having a trustee will assure the Court and the  
17 creditors that the taint of the Easterday family is completely removed from management, and it will  
18 ensure there will be no more one-sided transactions favoring Easterday Farms and Easterday family  
19 members over creditors of other entities. Any slate of managers appointed or arranged by the  
20 Easterday family will be suspect. And there is very little operational advantage in retaining a  
21 professional turnaround manager who has been on site for just a few weeks, even if that manager  
22 did not have the stigma of having participated in the North Lot sale and distribution of proceeds as  
23 Paladin has here. This factor supports appointment of a trustee.  
24  
25

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26  
27 <sup>9</sup> That is the maximum trustee fee allowable under Section 326. In chapter 7 cases that is the presumptive fee absent  
28 "extraordinary circumstances," *In re Salgado-Nava*, 473 B.R. 911, 921 (9th Cir. B.A.P. 2012), but in chapter 11 cases  
the court must consider other factors, and in event many chapter 11 trustees agree to accept lodestar rates subject to the  
statutory cap. *Id.* Thus, this number may well be much higher than a trustee's actual allowed compensation.

1           Considering all these factors, appointment of a trustee is in the best interests of the creditors  
2 and other parties in interest. While Tyson submits cause exists under § 1104(a)(1), including  
3 Paladin’s participation in the North Lot sale, § 1104(a)(2) provides the Court with “particularly  
4 wide discretion” to appoint a trustee even absent wrongdoing or mismanagement. *In re Bellevue*  
5 *Place Assocs.*, 171 B.R. 615, 623 (Bankr. N.D. Ill. 1994). That discretion should be exercised here.

7           **D.       Even if New Management Were Pristine, a Trustee Would Make More Sense**  
8           **Than a Debtor in Possession**

9           Even if the Court were to conclude that Debtor’s management changes leave Debtor with  
10 appropriate governance, the wholesale importation of new individuals for that purpose actually  
11 supports the appointment of a trustee. What does it mean to have a “debtor in possession” when all  
12 of the “debtor in possession’s” directors and officers are highly compensated professionals with  
13 little or no prior connection to the business?<sup>10</sup> That is little different from appointment of a trustee,  
14 and given the number of new professionals required to oversee Debtor’s operations under its  
15 proposed scenario, it will likely be more cost effective simply to have a trustee.

16           There is case law respecting the heavy burden a proponent bears in a trustee motion, and  
17 Debtor will no doubt supply the Court with many citations noting the presumption that a debtor in  
18 possession remains in control. That authority simply has no application in a case like this. As the  
19 Third Circuit has noted, “In the usual chapter 11 proceeding, the debtor remains in possession  
20 throughout reorganization because current management is generally best suited to orchestrate the  
21 process of rehabilitation for the benefit of creditors and other interests of the estate. . . . The strong  
22 presumption also finds its basis in the debtor-in-possession’s usual familiarity with the business it  
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27 <sup>10</sup> As noted in previous sections, the one with a slight acquaintance with the business is Mr. Richter of Paladin. He has  
28 been on hand for a few weeks, but his participation in the North Lot sale is a separate reason for appointment of a trustee,  
not a reason to avoid a trustee.

1 had already been managing at the time of the bankruptcy filing . . . .” *In re G-I Holdings, Inc.*, 385  
2 F.3d 313, 318 (3d Cir. 2004).

3 Here, there is no rehabilitation - this is a liquidation case with operations for only a limited  
4 time. That does not mean the case must immediately be converted to chapter 7. It may well be that  
5 the flexibility of chapter 11, and the possibility of a plan that resolves the intercompany  
6 relationships, will be needed to sort out the problems of the various Easterday family owned  
7 entities. The point is simply that there is no need for management with an historical view of the  
8 problems (which new management does not have in any event) to be involved in formulating such a  
9 plan.  
10

11 Further, under Debtor’s proposal the new CRO and independent directors have little<sup>11</sup> or no  
12 familiarity with Debtor’s business - the debtor can avoid a slam dunk trustee motion<sup>12</sup> only by  
13 importing an entire slate of new professional management, likely to cost the estate much more than  
14 a trustee. The entire rationale for the debtor in possession concept is missing. Everyone agrees  
15 there must be a wholesale change of management from the Easterday family regime - the only  
16 question is whether it should be a trustee or the proposed quasi-trustee structure of new  
17 professionals selected, at least in part, by Cody Easterday.  
18

19 In short, Debtor’s management changes actually support the appointment of a trustee. “If  
20 someone must be hired to report to the Court, the United States Trustee rather than the Debtor  
21 should select the new fiduciary.” *In re Euro-American Lodging Corp.*, 365 B.R. 421, 432 (Bankr.  
22 S.D.N.Y. 2007).  
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27 <sup>11</sup> See the previous footnote.

28 <sup>12</sup> Tyson does not believe this is an overstatement. Had Debtor suggested an ongoing governance structure involving members of the Easterday family, with or without Cody, it would have been laughable.



1 distribution of eighty percent of the proceeds to benefit the Easterday family. Further, any  
2 presumption of continuity in corporate management and retention of a debtor in possession has no  
3 application where Debtor itself acknowledges the need for a whole raft of new highly compensated  
4 professionals to oversee the Debtor, all at unnecessary expense.

5 Under these circumstances, there is cause for appointment of a trustee under § 1104(a)(1),  
6 and the totality of facts and circumstances in this case, as well as the practical realities, compel the  
7 appointment of a trustee in the best interest of creditors and the estate under § 1104(a)(2).  
8

9 Accordingly, Tyson respectfully requests the Court appoint a chapter 11 trustee and grant any  
10 further relief the Court deems appropriate.

11  
12 Dated: February 8, 2021.

13 Respectfully submitted,

14  
15 /s/ Alan D. Smith

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**APPENDIX 1**

**PROPOSED ORDER FOR APPOINTMENT OF TRUSTEE**

See attached.

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re:	Chapter 11
EASTERDAY RANCHES, INC.,	Case No.: 21-00141 WLH11
Debtor.	<b>[PROPOSED] ORDER GRANTING MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE</b>

The Motion of Creditor Tyson Fresh Meats, Inc. (“Tyson”) for Appointment of Chapter 11 Trustee was filed herein on or about February 5, 2021 as Dkt. No. \_\_\_\_ (the “Trustee Motion”). The Trustee Motion came on regularly for hearing before the Court on March 8, 2021, at 10:00 a.m. after adequate notice (the “Hearing”). Appearances were as noted in the record. The Court has considered the Trustee Motion and the declarations and exhibits filed therewith, along with any oppositions thereto, replies thereto, other pleadings relating thereto, and all evidence filed in connection therewith, and has heard argument of counsel.

1 Good cause appearing:

2 1. The Trustee Motion is hereby GRANTED. All oppositions thereto are  
3 OVERRULED.

4 2. The United States Trustee is hereby directed to select a Chapter 11 trustee for  
5 appointment in this case.

6 3. This Order memorializes the Court's ruling made on the record in open court at the  
7 Hearing. The Court's ruling on the record shall constitute the Court's findings and conclusions on  
8 this matter, and shall be deemed adopted herein.  
9

10  
11 **///End of Order///**  
12

13 **Presented by:**  
14

15 /s/ Alan D. Smith  
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